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COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
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Submitted: February 19, 2009
Decided: February 19, 2009

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Re: *Rohm and Haas Co. v. The Dow Chemical Co., et al.*
Civil Action No. 4309-CC

Dear Counsel:

Before me is a motion for a protective order to preclude the depositions of John C. Haas, David W. Haas, and Thomas W. Haas (collectively, the "Proposed Deponents"). The motion was filed on February 18 by the three Proposed Deponents, who are not parties to this action. I have carefully considered both the motion and the opposition filed today by The Dow Chemical Company. For the reasons set forth briefly below, the motion for a protective order is denied.

Each of the Proposed Deponents is a trustee of one or more of the trusts created by Otto Haas, the founder of Rohm and Haas Company, and his wife, (the "Haas Trusts"). Collectively, the Haas Trusts own thirty-two percent of the common stock of Rohm and Haas. David Haas and Thomas Haas are directors of Rohm and Haas, and John Haas is the former Chairman of the board of directors of Rohm and Haas. John Haas is ninety years old and still keeps an office at the company's headquarters in Philadelphia, but is not presently an employee, officer, or director of Rohm and Haas. Pursuant to requests for third-party discovery in this

action, the Haas Trusts have produced documents and provided a Rule 30(b)(6) deposition of a corporate representative, Dr. Janet Haas.

Neither the Hass Trusts nor any of the trustees are a party to the Agreement and Plan of Merger between Rohm and Haas and Dow (the "Merger Agreement"). The trustees of the Haas Trusts did, however, enter into a voting agreement with Rohm and Haas and Dow that provided, among other things, that the Haas Trusts would vote their shares in favor of the merger at the appropriate time and refrain from disposing of their shares prior to such shareholder vote, in exchange for Dow's agreement to acquire Rohm and Haas pursuant to the terms of the Merger Agreement.

The Proposed Deponents argue that they are entitled to a protective order because The Dow's proposed reasons for seeking the depositions are unpersuasive and do not justify the burden associated with the additional discovery. Dow argues that the protective order should be denied because (1) David and Thomas Haas are both Rohm and Haas Directors and trustees of the Haas Trusts and have unique perspectives on the alleged harm that will result to Rohm and Haas and its shareholders from a refusal to order specific performance; (2) John C. Haas and to a lesser extent David and Thomas Haas have large financial interests in the litigation and possess information relevant to the irreparable harm that could be suffered by the dominant shareholders if the Court denies specific performance; and (3) Janet Haas, the Rule 30(b)(6) representative that the Haas Trusts made available for deposition, made statements that are untrue or will be disagreed with by other members of the Haas family. Dow also asserts that the Proposed Deponents will suffer no inconvenience or prejudice from having to sit for depositions.

Generally, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party."[1] The Court of Chancery, however, has broad discretion under Court of Chancery Rule 26(c) to determine the scope of discovery. Indeed, in the exercise of its discretion and for good cause shown, this Court "may make any order which justice requires to protect a party or person from annoyance,

[1] Ct. Ch. R. 26(b)(1).

embarrassment, oppression, or undue burden or expense, including . . . (1) [t]hat the discovery not be had."[2]

The Proposed Deponents contend that Dow's reasons for seeking the depositions are not persuasive and that the depositions would impose an unnecessary burden on the Proposed Deponents. They further allege that Dow seeks the depositions as part of a "smear" campaign designed to harass the Proposed Deponents and the Haas Trusts into facilitating a settlement. While I am sympathetic to the Proposed Deponents' frustration with the sometimes unpleasant discovery associated with litigation, I am convinced that the discovery Dow seeks is relevant to the subject matter and defenses in this action. Additionally, the Proposed Deponents will face little inconvenience from the depositions.

David and Thomas Haas are both directors of Rohm and Haas and trustees for the Haas Trusts. John Haas is the former Chairman of the board of directors of Rohm and Haas and is the beneficiary of trusts that own a significant portion of Rohm and Haas. Dow's defense in this case is that the Court should decline to order specific performance because the merger of Dow and Rohm and Haas is no longer practicable and will result in significant harm to both companies. Defendants are entitled to discovery on these issues, which will include information about Rohm and Haas.

The standard for relevance under Delaware law is liberal; discovery is generally allowed if it is reasonably likely to lead to information that will be admissible at trial. Under this liberal standard, the testimony of the Proposed Deponents is reasonably likely to lead to relevant evidence regarding Rohm and Haas and the potential irreparable harm to Rohm and Haas and its shareholders that is implicated by the relief sought by Dow. The depositions may also produce relevant impeachment evidence regarding Janet Haas.

No significant harm is threatened by allowing Dow to take these depositions. If the Proposed Deponents are correct that the evidence is not relevant, then I will not allow its introduction at trial. Additionally, the depositions Dow seeks do not threaten the Proposed Deponents with undue burden or expense. David and Thomas Haas are directors of Rohm and Haas and should have no trouble providing deposition testimony. Dow has also offered to limit the deposition of John Haas to two hours and to accommodate other reasonable requests John Haas makes with respect to the deposition. Dow has assured the Court that it will treat

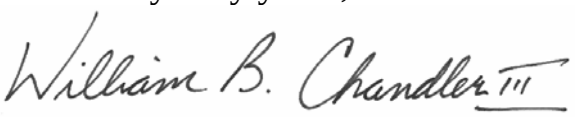
[2] Ct. Ch. R. 26(c).

all witnesses with respect and is willing to accommodate their schedules and conduct the depositions in a location convenient to the witnesses.

For the foregoing reasons and on the conditions described above, the motion for a protective order is denied.

IT IS SO ORDERED.

Very truly yours,



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